RIGHTS IN OFFSPRING OF MORTGAGED ANIMALS. — The general principle that the offspring of domestic animals belong to the owner of the mother is well settled. *Evans* v. *Merriken*, 8 Gill & J. (Md.) 39. See 2 BL. COM. 390. Consequently since chattel mortgages, in most jurisdictions, vest the legal title in the mortgagee, it seems that he should be entitled to the offspring although the mortgagor is in possession. There are indeed strong arguments against this view, but the weight of authority supports it. *Hughes* v. *Graves*, 1 Litt. (Ky.) 317; *contra*, *Shoobert* v. *De Motta*, 112 Cal. 215. Logically this should be extended to any descendant of the mortgaged animals, however remote. *Stewart* v. *Ball*, 33 Mo. App. 154. Some courts, however, have hesitated to go beyond the immediate offspring, and even in their case have made certain peculiar distinctions; for example, that the mortgage covers only the offspring already conceived, or that it includes the young only till they are weaned. *Thorpe, etc., Co.* v. *Cowles* 55 Iowa, 408; see *Rogers* v. *Highland*, 69 Iowa, 504.

The question is usually of importance not between the mortgagor and mortgagee, but with regard to the rights of innocent third persons who have dealt with a mortgagor in possession. The same problem arises in the case of a conditional sale where the vendor retains title while the vendee takes possession. In general innocent third parties will prevail over the holder of a chattel mortgage or conditional bill of sale unless the instrument has been recorded. *Funk* v. *Paul*, 64 Wis. 35. But it is difficult to see how the recording of a mortgage, which merely refers to the female, can be regarded as notice to third parties that the young fall under the same incumbrance. Yet a recent Georgia decision holds that the one having a recorded conditional bill of sale of a mare will be protected against the purchaser of the unweaned colt. The court intimates *obiter* that the incumbrancer would be protected only so long as the colt was unweaned. *Anderson* v. *Leverette*, 42 S. E. Rep. 1026. Both the decision and the *dictum* are in accord with the general law. *Darling* v. *Wilson*, 60 N. H. 59; *Winter* v. *Landphere*, 42 Iowa, 471.

The reasoning of the courts seems to be that it is necessary to prove only the facts that the mortgage or the bill of sale was recorded and that the colt was unweaned. Then will follow as presumptions of law: first, that the purchaser knew of what animal the colt was the offspring; second, that he had notice that the mother was mortgaged; third, that knowing the law, he knew that the offspring also fell under the incumbrance. Conversely the courts reason that if the offspring is weaned the purchaser will be protected whether he had actual knowledge of the facts or not. *Enright* v. *Dodge*, 64 Vt. 502. The fact that the offspring is weaned or unweaned is doubtless important evidence that the purchaser knew or did not know the parentage of the animal he bought. But it is submitted that is not sufficiently conclusive to be the basis of a presumption of law that a purchaser knew that the animal was mortgaged. The entire question should remain one of fact for the jury. Did the purchaser actually know the parentage of the animal he bought? In the principal case the facts seem to have justified the assumption of actual knowledge, and the decision is therefore correct.

LIMITATIONS ON POWER OF CITIES TO INCUR INDEBTEDNESS. — The attempts to evade the constitutional and statutory limitations on municipal indebtedness have been numerous and ingenious. Certain courts have

shown an unfortunate leniency in the enforcement of such limitations, and a recent vigorous federal decision is therefore welcome. A city in Iowa, already indebted beyond the constitutional limit, authorized an issue of bonds for the construction of municipal waterworks. A special tax was to be levied to be collected annually so long as should prove necessary, the proceeds to be devoted exclusively to the payment of the bonds. The bond holders were to have the right to compel the city slightly to increase for their benefit the tax for the maintenance of the water system, but they were to have no claim against the city's general funds. The waterworks were to be mortgaged to secure the bonds. The supreme court of the state held that the bonds would not create an indebtedness within the prohibition. *Swanson* v. *City of Ottumwa*, 91 N. W. Rep. 1048 (Iowa). The circuit court of appeals, however, has granted an injunction against the issue. *City of Ottumwa* v. *City Water Supply Co.*, 119 Fed. Rep. 315 (C. C. A., Eighth Circ.).

The policy underlying limitations on indebtedness is that the taxpayers of towns should pay as they go and should not unduly burden their successors. An application of this principle seems inevitably to lead to the conclusion reached by the federal court. The city assumes an obligation by the issue of bonds, and that obligation is to be met by future taxpayers. The two special features which are relied upon to withdraw the case from the operation of the constitutional prohibition, namely, that the whole tax is levied at once though to be collected in future years, and that the remedy of the creditors is restricted to a special fund, appear immaterial when one considers the substance of the transaction. The city promises to use its taxing power till the obligation is satisfied. That it practically does in any case of incurring debt, the difference being that in this case it limits the amount which it can be forced to collect in each year. It is thus more than a trustee of special revenues, it is a debtor responsible for payment in full.

The decision of the state court is asserted to be the logical working out of the principles of previous cases. Language broad enough to cover the facts in question may undoubtedly be found, but the cases for the most part can be distinguished. It is true that a certain freedom has been allowed cities indebted up to the limit, in order that their activities should not be completely paralyzed. They may anticipate the collection of taxes to be levied for the current year, and issue warrants for ordinary expenses to be paid from these uncollected revenues. *Grant* v. *City of Davenport*, 36 Iowa, 396. The state court argues that as the city could thus levy a tax sufficiently large to construct an entire waterworks system and could enter into the necessary contracts before the actual collection of the money provided that the whole collection were to be made within the year, so, without creating a forbidden debt, it can extend the tax over a period of years. But the reasons for the relaxation of the prohibition in the former case do not apply to the latter. Moreover the difference in principle as shown by the effect on future taxpayers is obvious. The cases most relied on by the Iowa court are those in which contracts or bond issues are supported because the rights of the creditors are restricted to special funds, such as the receipts of a water system or special assessments against the owners of property benefited. *Quill* v. *City of Indianapolis*, 124 Ind. 292 ; *Faulkner* v. *City of Seattle*, 19 Wash. 320. In those cases, however, the city is under no corporate liability ; it has made no promise to employ its taxing power. It is merely the agent to collect and pay over money other than the proceeds of general taxation. If special assessments are not paid the remedy is against the property

assessed and not against the city to compel further assessments. The vital distinction is that in such cases there is no burden placed upon the general taxpayers of the future as there is in the principal case. Other cases cited may be distinguished on the ground that the city was merely given an option and was not put under any obligation. *Burnham* v. *City of Milwaukee*, 98 Wis. 128. Though the subject is in a somewhat confused state, the decision of the federal court seems clearly justified on authority as well as right in principle. See *City of Joliet* v. *Alexander*, 194 Ill. 457. A contrary decision would allow cities to nullify the constitutional provisions by levying continuing taxes to provide for all obligations they wished to incur.

DISCRETIONARY POWER OF COURTS OF EQUITY. — There is no more distinctive attribute of the power of the chancellor than the latitude of his discretion. Equitable remedies being extraordinary, they may, at the chancellor's discretion, be refused or given in order to do equity. And equity is viewed in this connection in a large sense; it is not only what is just and right as between plaintiff and defendant, but also what, according to a sound public policy, is just and right as regards the interests of the public. Thus, where the plaintiff would not otherwise have succeeded, we see equity giving relief because of the public benefit; and where the plaintiff would ordinarily have prevailed, refusing it because of the public harm. *Joy* v. *St. Louis*, 180 U. S. 1, 50; *Conger* v. *N. Y. Co.*, 120 N. Y. 29.

How far this power should be extended is involved in the consideration of a recent case, where a plaintiff sought to enjoin the infringement of his patent on bogus coin detectors. The defendant established that the plaintiff used these detectors exclusively to guard gambling machines. The court, one judge dissenting, nevertheless granted the injunction, on the ground that the "taint regarded must affect the particular rights asserted in the suit." *Fuller* v. *Berger*, 35 Chic. Leg. News 221 (C. C. A., Seventh Circ.). It is believed that on principle a different result should have been reached. Evidently the majority considered that the case involved only the maxim, "the plaintiff must come into equity with clean hands," and hence applied its legitimate limitation, that the wrong-doing must be connected with the transaction between the plaintiff and the defendant. *Bateman* v. *Fargason*, 4 Fed. Rep. 32. But the question really involved is a much broader one, and not at all one between the parties. It is the question whether equity, representing the conscience of the public, should directly assist an iniquitous undertaking. In view of the entire attitude and conception of courts of equity, the answer to this would seem to be that it should not. The principal case may be largely explained by the nature of its facts. The majority seem to have doubted whether gambling has yet become sufficiently unconscionable to warrant a refusal of relief, and, moreover, since the defendant also was using the invention for gambling, they may well have thought that the injunction would decrease, rather than aid, the objectionable practice. They cite as authority, *Brown Saddle Co.* v. *Troxel*, 98 Fed. Rep. 620, and *National Folding Box Co.* v. *Robertson*, 99 Fed. Rep. 985. But although these were patent cases in which an injunction was granted despite the fact that the plaintiff was violating the anti-trust laws, they may be distinguished. The iniquity alleged was only *mala prohibita*, and to assist a monopoly is only what a court of equity is necessarily called upon to do whenever it enforces a patent. The true rule would seem to be stated in the dissenting opinion.